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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA  
SOUTHERN DIVISION**

<b>IN RE:</b>	§	<b>Case No. 09-14814-LBR</b>
	§	<b>(Jointly Administered)</b>
<b>THE RHODES COMPANIES, LLC,</b>	§	
<b>aka "Rhodes Homes," et al.,</b>	§	<b>Chapter 11</b>
	§	
<b>Debtors.<sup>1</sup></b>	§	
	§	<b>Hearing Date: October 30, 2009</b>
	§	<b>Hearing Time: 1:30 p.m.</b>

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, if applicable, are: Heritage Land Company, LLC (2918); The Rhodes Companies, LLC (3060); Rhodes Ranch General Partnership (1760); Tick, LP (0707); Glynda, LP (5569); Chalkline, LP (0281); Batcave, LP (6837); Jackknife, LP (6189); Wallboard, LP (1467); Overflow, LP (9349); Rhodes Ranch Golf and Country Club (9730); Tuscany Acquisitions, LLC (0206); Tuscany Acquisitions II, LLC (8693); Tuscany Acquisitions III, LLC (9777); Tuscany Acquisitions IV, LLC (0509); Parcel 20 LLC (5534); Rhodes Design and Development Corp. (1963); C&J Holdings, Inc. (1315); Rhodes Realty, Inc. (0716); Jarupa LLC (4090); Elkhorn Investments, Inc. (6673); Rhodes Homes Arizona, LLC (7248); Rhodes Arizona Properties, LLC (8738); Tribes Holdings LLC (4347); Six Feathers Holdings, LLC (8451); Elkhorn Partners, A Nevada Limited Partnership (9654); Bravo Inc. (2642); Gung-Ho Concrete, LLC (6966); Geronimo Plumbing, LLC (6897); Apache Framing, LLC (6352); Tuscany Golf Country Club, LLC (7132); Pinnacle Grading, LLC (4838).

**Affects:**

- ☒ All Debtors  
☐ Affects the following Debtor(s)

§  
 §  
 § **REPLY OF THE FIRST LIEN**  
 § **STEERING COMMITTEE TO (I) CERTAIN**  
 § **ISSUES RAISED *SUA SPONTE* BY THE**  
 § **BANKRUPTCY COURT WITH RESPECT**  
 § **TO SUFFICIENCY OF DISCLOSURE**  
 § **STATEMENT AND (II) STANLEY**  
 § **CONSULTANTS, INC.'S OBJECTION TO**  
 § **SUFFICIENCY OF DISCLOSURE**  
 § **STATEMENT**

The First Lien Steering Committee (the "First Lien Steering Committee"), consisting of certain unaffiliated lenders under the Credit Agreement dated as of November 21, 2005 among Heritage Land Company, LLC, The Rhodes Companies, LLC, and Rhodes Ranch General Partnership, as the Borrowers, the Lenders Listed Therein as the Lenders (collectively, the "First Lien Lenders"), and Credit Suisse, Cayman Islands Branch, as Administrative Agent, Collateral Agent, Syndication Agent, Sole Bookrunner and Sole Lead Arranger, by and through its undersigned counsel, hereby files this reply (the "Reply") to (i) certain issues raised *sua sponte* by the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court") with respect to the adequacy of information contained in the Initial Disclosure Statement (as defined below), and (ii) Stanley Consultants, Inc.'s ("Stanley") Objection to Sufficiency of Disclosure Statement (the "Stanley Objection"). In support of this Reply, the First Lien Steering Committee respectfully represents as follows:

**BACKGROUND**<sup>2</sup>

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3       1.       On either March 31, 2009 or April, 1, 2009 (collectively, the "Petition Date"),  
4 each of the Debtors commenced with this Court a voluntary case under chapter 11 of the  
5 Bankruptcy Code.

6       2.       Pursuant to Bankruptcy Code sections 1107(a) and 1108, the Debtors are  
7 currently authorized to operate their businesses and manage their properties as debtors in  
8 possession. The Debtors' chapter 11 cases are being jointly administered for procedural  
9 purposes only. No trustee or examiner has been appointed in these chapter 11 cases.  
10

11       3.       On May 26, 2009, pursuant to Bankruptcy Code section 1102, the United  
12 States Trustee for the District of Nevada appointed an Official Committee of Unsecured  
13 Creditors (the "Committee"). The Committee currently consists of four members: G.C.  
14 Wallace, Inc.; Interstate Plumbing & Air Conditioning; M & M Electric, Inc.; and Southwest  
15 Iron Works, LLC.  
16

17       4.       On September 25, 2009, the First Lien Steering Committee filed the Plan of  
18 Reorganization Pursuant to Chapter 11 of the Bankruptcy Code for The Rhodes Companies,  
19 LLC, et al. (the "Initial Plan") and the accompanying Disclosure Statement for the Plan of  
20 Reorganization Pursuant to Chapter 11 of the Bankruptcy Code for The Rhodes Companies,  
21 LLC, et al. (the "Initial Disclosure Statement").  
22

23       5.       On October 19, 2009, the Bankruptcy Court raised certain issues with respect  
24 to the adequacy of the information contained in the Initial Disclosure Statement.  
25 Specifically, the Bankruptcy Court requested that the Initial Disclosure Statement be  
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27  
28       <sup>2</sup> Terms not otherwise defined herein shall have the meanings ascribed to such terms in the Stanley  
Objection or the First Amended Plan.

1 amended to include additional information regarding (i) whether, under the law of this  
2 jurisdiction, the applicable standards for approval of the Mediation Settlement had been  
3 satisfied, (ii) which Claims constitute General Unsecured Claims, and which constitute  
4 Trade Claims, (iii) why General Unsecured Claims and Trade Claims were separately  
5 classified and whether such classification is permitted under applicable provisions of the  
6 Bankruptcy Code, (iv) the rights and preferences of the various Litigation Trust Interest  
7 series and (v) the assets being transferred to the Litigation Trust.

8  
9 6. On October 20, 2009, Stanley filed the Stanley Objection. Among other  
10 things, the Stanley Objection asserts that the Initial Disclosure Statement should not be  
11 approved because the Initial Disclosure Statement does not provide adequate information  
12 regarding the treatment of claims asserted by Stanley against Debtors Rhodes Homes  
13 Arizona, LLC, Rhodes Design and Development Corporation, and Rhodes Ranch General  
14 Partnership. The Stanley Objection further asserts that the Initial Disclosure Statement and  
15 the Initial Plan improperly attempt to transfer rights in Stanley's intellectual property to the  
16 Rhodes Entities or to James Rhodes.

17  
18 7. On October 27, 2009, the First Lien Steering Committee filed the First  
19 Amended Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code for The  
20 Rhodes Companies, LLC, et al. (the "First Amended Plan") and the accompanying First  
21 Amended Disclosure Statement for the First Amended Plan of Reorganization Pursuant to  
22 Chapter 11 of the Bankruptcy Code for The Rhodes Companies, LLC, et al. (the "First  
23 Amended Disclosure Statement"). In addition, the First Lien Steering Committee filed  
24 exhibits D and E to the First Amended Disclosure Statement, which exhibits compare the  
25 proceeds to be realized if the Debtors were to be liquidated in hypothetical cases under  
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chapter 7 of the Bankruptcy Code against the proceeds to be realized under the First Amended Plan as a going concern.

**REPLY**

**I. The Disclosure Statement has been Amended to Address the Concerns Raised by this Court.**

8. The First Amended Disclosure Statement provides additional information and clarification with respect to the five issues raised by the Bankruptcy Court at the hearing held on October 19, 2009.

**A. Mediation Settlement and Related Release Provisions**

9. The First Amended Disclosure Statement includes additional information regarding the Mediation Settlement entered into between, among others, the First Lien Steering Committee, the Rhodes Entities, and the Debtors. See First Amended Disclosure Statement, Art. III.F. Specifically, the First Amended Disclosure Statement provides that, pursuant to Bankruptcy Code section 363 and Bankruptcy Rule 9019, the First Amended Plan constitutes a good faith compromise of all Claims, Interests and controversies relating to the subject matter of the Mediation Settlement. Id.

10. The First Amended Disclosure Statement describes the standard applied by courts in the Ninth Circuit in determining whether to approve such a compromise as fair and equitable. Id. In determining whether a proposed settlement is fair and equitable, courts in this District consider: (i) the probability of success of the litigation; (ii) the difficulties, if any, to be encountered in the matter of collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (iv) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. See id.; see also In re A&C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). As

1 set forth in detail below, the First Amended Disclosure Statement describes the basis for the  
2 First Lien Steering Committee's belief that the compromise embodied in the First Amended  
3 Plan and the Mediation Settlement is fair and equitable under the applicable test articulated  
4 by the Ninth Circuit.  
5

6 11. The First Amended Disclosure provides detailed information regarding  
7 potential preference actions settled pursuant to the Mediation Settlement and the First  
8 Amended Plan. As stated in the First Amended Disclosure Statement, the First Lien  
9 Steering Committee estimates that the amount of all payments made to the Rhodes Entities  
10 within the year prior to the Petition Date exceeds \$9 million. Id. With respect to the first  
11 factor articulated by the A&C Properties Court, the First Amended Disclosure Statement  
12 notes that litigation over the potential preferential payments identified in the First Amended  
13 Disclosure Statement would have been contentious and hard fought. Id. The First Amended  
14 Disclosure Statement explains that the Rhodes Entities would likely have asserted a number  
15 of defenses to the preference claims, including that such payments were received in the  
16 ordinary course of business. Moreover, the First Amended Disclosure Statement informs  
17 that, based on the First Lien Steering Committee's review of all payments made to insiders  
18 within the one year period prior to the Petition Date as reflected in the Debtors' Schedules  
19 and Schedule B to the Mediation Term Sheet, and on subsequent conversations with  
20 Debtors' counsel, the First Lien Steering Committee believes that the Rhodes Entities may  
21 have had valid defenses to certain of the transfers. Id.  
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25 12. As stated in the First Amended Disclosure Statement, the Mediation  
26 Settlement also reflects a resolution of potential fraudulent conveyance actions held by the  
27 Estates against the Rhodes Entities. The First Amended Disclosure Statement notes,  
28

1 however, that the First Lien Steering Committee believes that such claims would also have  
 2 been heavily litigated in the absence of a settlement and, while the First Lien Steering  
 3 Committee believes that it would have ultimately prevailed on the fraudulent transfer claims,  
 4 there can be no guarantee that a successful result would have been obtained for the Estates.  
 5 Id. In addition, the First Amended Disclosure Statement explains that the prosecution of  
 6 both the fraudulent conveyance claims and the preference claims would have resulted in  
 7 substantial expense for the Estates, while at the same time delaying the Debtors' emergence  
 8 from chapter 11. Id. The First Amended Disclosure Statement thus explains the First Lien  
 9 Steering Committee's conclusion that the third factor of the A&C Properties test also weighs  
 10 in favor of the approval of the Mediation Settlement.<sup>3</sup> Id.

13 13. With respect to the fourth factor of the A&C Properties test, the First  
 14 Amended Disclosure Statement describes the benefit to the Debtors' creditors of the  
 15 compromise embodied in the First Amended Plan and the Mediation Settlement.  
 16 Specifically, the First Amended Disclosure Statement explains that Creditors of the Estates  
 17 will derive a material benefit from the approval of the Mediation Settlement because, among  
 18 other things, the Mediation Settlement (i) contemplates a \$3.5 million Cash payment from  
 19 the Rhodes Entities to the Reorganized Debtors, which payment will be used to fund  
 20 working capital needs and distributions contemplated by the First Amended Plan, (ii)  
 21 provides for the transfer of the Arizona Assets, which were non-core assets of the  
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24 <sup>3</sup> Regarding the second factor of the A&C Properties test, the First Amended Disclosure Statement  
 25 explains that the First Lien Steering Committee has not completed a detailed review of the financial  
 26 information of each Rhodes Entity that may have been liable in connection with the Claims released under the  
 27 First Amended Plan, and cannot therefore make a determination as to whether each such entity could have  
 28 satisfied its obligations in connection with any judgment entered by the Bankruptcy Court, but believes that the  
 Rhodes Entities may not have been able to comply financially with the terms of judgments received in  
 connection with successful litigation regarding the Claims being released under the First Amended Plan.



1 Reorganized Debtors that likely would have required significant additional funding for  
2 development, to the Rhodes Entities, (iii) provides for the transfer of the Rhodes Ranch Golf  
3 Course, the maintenance and continued operation of which is paramount to maximizing the  
4 value of the Reorganized Debtors' assets, to the Reorganized Debtors, (iv) avoids the  
5 significant expense and time delay associated with litigating the Claims released under the  
6 First Amended Plan, which would have yielded uncertain results, and (v) enables the  
7 Debtors to emerge from bankruptcy expeditiously and consensually, without any  
8 unnecessary eradication of value through a prolonged stay in chapter 11. Id. In addition, the  
9 First Amended Disclosure Statement notes that all Claims and Causes of Action against the  
10 Rhodes Entities that are not covered by the limited release provided for in the Mediation  
11 Settlement will be transferred to the Litigation Trust for the benefit of all Creditors, to be  
12 analyzed and, as appropriate, prosecuted and/or settled post-emergence. Id.

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15 14. In addition to the material benefits listed above, the First Amended  
16 Disclosure Statement informs Creditors that the First Lien Steering Committee believes that  
17 the Mediation Settlement will also ensure a smooth transition to new ownership under the  
18 First Amended Plan. The First Amended Disclosure Statement explains that the Mediation  
19 Settlement will allow the Reorganized Debtors to continue operations without interruption  
20 upon emergence because stringent bond and licensing requirements will be maintained  
21 through the cooperation of the Rhodes Entities, and that the Mediation Settlement also  
22 contemplates that new Qualified Employees and HOA board representatives will be elected  
23 by the Reorganized Debtors to ensure a unified and organized post-Effective Date  
24 management team. Finally, the First Amended Disclosure Statement explains that, on  
25 balance, the First Lien Steering Committee believes that the Estates and their Creditors will  
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1 be obtaining value in excess of the consideration to be given to the Rhodes Entities if the  
 2 Mediation Settlement is approved. Id.

3 **B. Definition of General Unsecured Claims**

4  
 5 15. In order to avoid the uncertainty and potential confusion identified by the  
 6 Bankruptcy Court regarding General Unsecured Claims and Trade Claims, the definition of  
 7 Trade Claims has been deleted from both the First Amended Disclosure Statement and the  
 8 First Amended Plan. While the Initial Disclosure Statement and the Initial Plan defined  
 9 General Unsecured Claims separately from Trade Claims, the definition of General  
 10 Unsecured Claims has been broadened to encompass all Unsecured Claims (subject to the  
 11 exceptions noted in the First Amended Plan).<sup>4</sup> See First Amended Plan, Art. I.61. Because  
 12 Trade Claims are now subsumed within the definition of General Unsecured Claims, and  
 13 because (as discussed below) Trade Claims and General Unsecured Claims are no longer  
 14 separately classified, the First Lien Steering Committee submits that the lack of clarity  
 15 identified by the Bankruptcy Court has been adequately addressed.

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 18 **C. Treatment of General Unsecured Claims and Trade Claims**

19 16. In response to the Bankruptcy Court's concern regarding the separate  
 20 treatment of General Unsecured Claims and Trade Claims under the Initial Plan, the First  
 21 Amended Disclosure Statement has been modified (as discussed above) to reflect that  
 22 General Unsecured Claims now include Trade Claims, and that General Unsecured Claims  
 23 and Trade Claims will therefore receive the same treatment under the First Amended Plan.  
 24 Specifically, the First Amended Disclosure Statement explains that each Holder of an  
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26  
 27 <sup>4</sup> The First Amended Plan defines General Unsecured Claims as follows: Any Claim against any of  
 28 the Debtors that is not a/an (a) Administrative Claim, (b) Priority Tax Claim, (c) Priority Non-Tax Claim, (d)  
 First Lien Lender Claim, (e) Second Lien Lender Claim, (f) Other Secured Claim, (g) Subordinated Claim, or  
 (h) Intercompany Claim.

1 Allowed General Unsecured Claim (including any Allowed Rhodes Entities Claims) shall  
 2 receive its pro rata share of the Litigation Trust Interests allocable to the Holders of General  
 3 Unsecured Claims on account of its Allowed Claim. See First Amended Disclosure  
 4 Statement, Art. IV.C.5.

6 17. The First Amended Disclosure Statement also provides that the First Lien  
 7 Lenders may purchase certain General Unsecured Claims. As described in the First  
 8 Amended Disclosure Statement, each of the First Lien Lenders will now receive its pro rata  
 9 share of \$1.5 million in Cash. See First Amended Disclosure Statement, Art. IV.C.1. The  
 10 First Lien Lenders have agreed to use the aggregate \$1.5 million Cash payment provided to  
 11 them under the First Amended Plan to acquire those Claims listed on a Claim Purchase  
 12 Schedule to be included in the Plan Supplement. See First Amended Disclosure Statement,  
 13 Art. IV.H.7.

15 18. As the Initial Plan and Initial Disclosure Statement have been amended to  
 16 provide that Holders of General Unsecured Claims and Trade Claims will receive the same  
 17 treatment, the First Lien Steering Committee believes that the issues raised by the  
 18 Bankruptcy Court with respect to the potentially disparate treatment of unsecured creditors  
 19 have been resolved.

21 **D. The Litigation Trust Interests and the Litigation Trust Assets**

22 19. The Bankruptcy Court's concerns regarding the Litigation Trust Interests and  
 23 the lack of specificity regarding the Litigation Trust Assets have also been addressed by the  
 24 First Amended Disclosure Statement and the First Amended Plan. First, the First Amended  
 25 Disclosure Statement and First Amended Plan reflect an overall simplification of the  
 26 Litigation Trust Interests to be issued under the First Amended Plan. In contrast to the  
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1 separate series of Litigation Trust Interests provided for in the Initial Plan, the First  
 2 Amended Plan includes only a single series of Litigation Trust Interests. See First Amended  
 3 Plan, Art. I.85. Accordingly, any discussion of separate series of Litigation Trust Interests  
 4 has been removed from the First Amended Disclosure Statement and the First Amended  
 5 Plan. Second, with respect to the Litigation Trust Assets, the First Amended Plan has been  
 6 modified to clearly indicate that the Litigation Trust Assets will be as set forth in an exhibit  
 7 to the Plan Supplement. See First Amended Plan, Art.I.82. The First Lien Steering  
 8 Committee therefore submits that the modifications reflected in the First Amended  
 9 Disclosure Statement and the First Amended Plan have resolved the issues raised by the  
 10 Bankruptcy Court.

## 11 **II. The First Amended Disclosure Statement Addresses the Stanley Objection**

12 20. In response to the Stanley Objection, the First Amended Disclosure  
 13 Statement reflects modifications that provide adequate information regarding the treatment  
 14 of Stanley's Claims. That portion of the Stanley Objection relating to Stanley's intellectual  
 15 property is, however, without merit and must be overruled.

### 16 **A. Treatment of Stanley's Claims**

17 21. The First Amended Disclosure Statement contains adequate information  
 18 regarding the treatment of the claims asserted by Stanley against the Debtors. In order to  
 19 address the issues raised by the Stanley Objection, the First Amended Disclosure Statement  
 20 provides additional information regarding the treatment of Stanley's Claims. The First  
 21 Amended Disclosure Statement expressly acknowledges that Stanley filed Proofs of Claim  
 22 against Rhodes Homes Arizona, LLC, Rhodes Design and Development Corporation, and  
 23 Rhodes Ranch General Partnership asserting Claims in the total aggregate amount of  
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\$4,609,249.00 on account of prepetition services allegedly rendered pursuant to agreements with (i) Rhodes Homes Arizona, LLC and (ii) Rhodes Design and Development Corporation and Rhodes Ranch General Partnership. See First Amended Disclosure Statement, Art. II.B. The First Amended Disclosure Statement also specifically provides that the Reorganized Debtors will evaluate and, if appropriate, file objections to such Claims prior to the Claims Objection Deadline. Id. In addition, the First Amended Disclosure Statement states that the Reorganized Debtors intend to pursue the Stanley Engineering Litigation after emerging from bankruptcy.<sup>5</sup> Id. Finally, the First Lien Steering Committee believes that the elimination of the separate classification of Trade Claims will similarly eliminate any confusion regarding the classification of the Claims asserted by Stanley.

**B. Transfer of Stanley's Intellectual Property**

22. Stanley's assertion that the First Amended Disclosure Statement and the First Amended Plan seek to improperly transfer rights in Stanley's intellectual property to the Rhodes Entities or Rhodes is without merit. Stanley argues that the Debtors have no legal right to transfer rights to Stanley's intellectual property because the Debtors have neither paid Stanley for the work it performed nor obtained Stanley's written permission to transfer such intellectual property. See Stanley Objection, pgs. 6-7. While the First Lien Steering Committee maintains that the respective rights of Stanley and the Debtors to such intellectual property have not yet been resolved, it is well settled that a debtor can only transfer property to the extent that the debtor has an interest in such property. See 11 U.S.C. § 541; see also In re AgriBioTech, Inc., 319 B.R. 207, 211 (D. Nev. 2004) (recognizing that a debtor's estate consists solely of property in which the debtor has a legal or equitable

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<sup>5</sup> Upon information and belief, the Debtors dispute that Stanley has fully complied with the terms of all agreements related thereto.

1 interest). Accordingly, in the event that it is determined that the Debtors do not have an  
 2 interest in the intellectual property discussed in the Stanley Objection, the First Amended  
 3 Plan cannot transfer an interest in such intellectual property to the Rhodes Entities or any  
 4 other party.<sup>6</sup> The First Lien Steering Committee therefore submits that Stanley's objection  
 5 with respect to the Debtors' proposed use of its intellectual property does not go to the  
 6 sufficiency of the First Amended Disclosure Statement and should only be considered, if at  
 7 all, in connection with confirmation.  
 8

### 9 CONCLUSION

10 WHEREFORE, for the reasons set forth above, the First Lien Steering Committee  
 11 respectfully requests that the Court (i) approve the First Amended Disclosure Statement, (ii)  
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 28 <sup>6</sup> The First Lien Steering Committee is waiting on confirmation from the Rhodes Entities as to whether the Rhodes Entities will seek the transfer of any contracts or intellectual property related to Stanley.

1 overrule the Stanley Objection, and (iii) grant the First Lien Steering Committee such other  
2 and further relief as is just and proper under the circumstances.

3  
4 Dated this 28th day of October, 2009.

5  
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